

**Remarks/Arguments****Claim Rejections – 35 U.S.C. § 112**

The Office rejected claim 18 as being indefinite for failing to provide antecedent basis for "the water usage data". Claim 18 is moot in light of the amendments to claim 10. Therefore, claim 18 has been cancelled.

**35 U.S.C. § 102**

The Office rejected claims 1-5, 10, 12-15, 18 and 19 as being anticipated by Collins (U.S. Patent No. 6,402,048). The applicant disagrees especially in view of the claim amendments made herein.

The claim elements from dependent claims 27 and 28 have been moved into independent claims 1 and 10, respectively. As claims 27 and 28 were not rejected as being anticipated by Collins, the applicant submits that amended claims 1 and 10 are novel over Collins.

**35 U.S.C. § 103**

The Office rejected claims 7, 8, 11, 25, 27, and 28 as being unpatentable over Collins in view of Peek et al. (U.S. Patent No. 6,343,255) (Peek). Since the elements of claims 27 and 28 were incorporated into claims 1 and 10, respectively, the applicant will distinguish claims 1 and 10 only.

Both of the amended claims now recite the sending of "at least one of a start time, a run time, water flow data, and water pressure data from the irrigation controller to the government agency." In the Office Action of September 10, 2004, the examiner directed the applicant to column 5, lines 41-53 of Peek to find this element. The applicant has thoroughly reviewed the referenced portion of Peek and disagrees that this element is disclosed in those lines or anywhere in Peek.

The referenced portion of Peek teaches that soil moisture sensors can measure soil moisture and a series of flow meters can measure the quantity of water delivered to crops. Peek goes on to say that additional sensors can supply the 'weather station' with data. Yes, Peek contains the words "soil moisture" and "quantity of water", but the mere recitation of certain

words does not equate to a finding of obviousness. “[T]he inquiry is not whether each element existed in the prior art, but whether the prior art made obvious the invention as a whole for which patentability is claimed.” *Harness International, Inc. v. Simplimatic Engineering Co.*, 819 F.2d 1100, 1108, 2 USPQ2d 1826, 1832 (Fed. Cir. 1987).

Moreover, even patentable claims are made up of known elements. “That all elements of an invention may have been old is not unusual, and indeed, irrelevant. Virtually all inventions are combinations and virtually all are combinations of old elements.” *American Medical Systems Inc. v. Medical Engineering Corp.*, 6 F.3d 1523, 28 USPQ2d 1321 (Fed. Cir. 1993).

The applicant would like to emphasize that Peek fails to teach or suggest the desirability of sending such information from an irrigation controller to a government agency. Thus, while one reference may teach “water flow data” and another may teach “a government agency”, the prior art must suggest the desirability to combine. “[T]he question is not simply whether the prior art ‘teaches’ the particular element of the invention, but whether it would ‘suggest the desirability’, and thus the obviousness, of making the combination.” *Alco Standard Corp. v. Tennessee Valley Authority*, 808 F.2d 1490, 1498, 1 USPQ2d 1337, 1343 (Fed. Cir. 1986). In short, there is no suggestion that would lead one to combine the “water flow data” of Peek with the “Department of Agriculture” in Collins to find the element of sending at least one of a start time, a run time, water flow data, and water pressure data from the irrigation controller to the government agency.

**Conclusion**

The applicant requests that the examiner allow the claims in their current form. If, however, the claims are not allowed, the applicant requests prompt notice so that he may file a timely Notice of Appeal.

Respectfully submitted,

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